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ASARCO

JAN 20 1999

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RETURN RECEIPT REQUESTED

Montana Department of
Environmental Quality
Permitting & Compliance Division
101 North Capitol Street

January 19, 1999

William Potts
Permitting and Compliance Division
Air and Waste Management Bureau
Montana Department of Environmental Quality
P. O. Box 200901
Helena, Montana 59620-0901

Dear Mr. Potts

This letter responds to your letter of December 29, 1998, regarding the November 4-5, 1998 compliance evaluation inspection of the Asarco East Helena Plant. We appreciate your willingness to extend by 10 days each of the two deadlines for providing information in response to certain requests set forth in your letter. This letter responds to your questions regarding management of "tank bottoms" and pertaining to two waste shipment for which Asarco did not have signed manifests indicating receipt by a designated facility at the time of your inspection. We plan to respond by January 29, 1999 to your request for information regarding sulfuric acid sales.

Hazardous Waste Manifests

Your letter requests submission of "[a]n exception report" regarding the efforts by Asarco to locate certain hazardous wastes for which signed manifests were missing at the time of your inspection. Subsequently, however, signed copies of these manifests were received from the disposal facility. Copies are attached to this letter. Accordingly, Asarco has undertaken no further effort "to locate the hazardous waste". In the future, Asarco will try to achieve meticulous compliance with the manifesting requirements, including the 35-day inquiry and exception reporting. Asarco has already developed and implemented standard operating procedures under our Asarco Management System to address this matter. Asarco anticipates that, due to the transportation delays, it may be continue to experience delays in receipt of signed manifests with respect to rail shipments of bulk loads of hazardous wastes.

Tank Bottom Management

Asarco cannot readily accept the contention of the Department that dewatering of the tank bottoms sediments prior to recycling constitutes "treatment" and that, therefore, the tank bottoms should be considered hazardous wastes. Under the current RCRA regulations, these tank bottoms are either "sludges" or "byproducts" that exhibit a characteristic of hazard and are

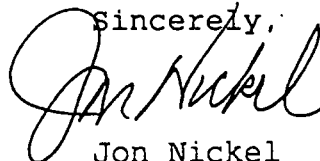
destine for legitimate reclamation. As such, they remain exempt from the definitions of solid and hazardous waste. In the preamble to its January 1985 rule on the definition of "solid waste," the Environmental Protection Agency expressly stated that dewatering of a wastewater treatment sludge by a primary smelting facility before return of the sludge to the smelting process for metal recovery constitutes reclamation. See 50 Fed. Reg. 614, 639-40(1985). Asarco is not aware of any Montana regulation or authoritative guidance that would compel a contrary conclusion.

Accordingly, Asarco does not believe that its management of these tank bottoms is subject to hazardous waste regulations, including those governing temporary accumulation. An exception is the speculative accumulation rule, which Asarco pays close attention. Also, we don't believe that our practice of allowing evaporative drying of these materials in outdoors bins results in a release of hazardous waste or hazardous waste constituents to the environment. Most, if not all, of the free liquid contained in the tank bottoms evaporate or are absorbed by the limerock. It is true that the Department observed some liquid escaping containment at an outdoor bin. Nonetheless, as your letter acknowledges, this liquid flows onto a concrete roadway. The plant routinely operates a road sweeper on such roadways and in all likelihood any residual metals in this seepage were captured by the sweeper. As such they were not being released to the soil, surface water, or groundwater.

Asarco acknowledges that these tank bottoms will lose their broad exemption from solid and hazardous waste status, if and when Montana adopts EPA's "LDR Phase IV" rule. In anticipation of this rule, and to address the concerns raise in your letter and inspection report, Asarco plans to immediately improve its management of these materials to ensure their dewatering and storage in units that will qualify under the "conditional exclusion" from the definition of solid waste propounded in the Phase IV rule.

In light of the fact that Asarco can demonstrate that the two waste shipments at issue in your manifest review have reached designated facilities, and in light of the foregoing discussion of tank bottom management, we respectfully suggest that no further enforcement action is appropriate.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jon Nickel", is written over the typed name.

Jon Nickel

Enclosure

Emergency Contact Telephone Number

Order No. 16911

UNIFORM HAZARDOUS
WASTE MANIFEST

1. Generator's US EPA ID No.

M T D 0 0 6 2 3 0 3 4 6 0 0 1 6 0

Manifest
Document No.

2. Page 1

of 2

Information in the shaded areas is
not required by Federal law

3. Generator's Name and Mailing Address

Asarco Incorporated
P. O. Box 1230 East Helena, Mt. 59635

4. Generator's Phone (406) 227-4015

A. State Manifest Document Number

B. State Generator's ID

5. Transporter 1 Company Name

Burlington Northern Railroad

6. US EPA ID Number

M N D 0 4 8 3 4 1 7 8 8

C. State Transporter's ID

D. Transporter's Phone

7. Transporter 2 Company Name

Union Pacific Railroad

8. US EPA ID Number

N E D 0 0 1 7 9 2 9 1 0

E. State Transporter's ID

F. Transporter's Phone

9. Designated Facility Name and Site Address

Safety-Kleen Grassy Mountain Facility
3 Miles East and 7 Miles North of Knolls
Exit 41 Off Interstate 80

10. US EPA ID Number

Tooie County
Utah 84029
U T D 9 9 1 3 0 1 7 4 8

G. State Facility's ID

H. Facility's Phone

11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)

H.M.

12. Containers

No.

Type

13. Total
Quantity14. Unit
Wt/Vol

1. Waste No.

a. RQ, Hazardous Waste Solid, N.O.S. (D006 Cadmium
D008 Lead, D010 Selenium), 9 NA3077, PGIII
RQ= 10lbs. Marked:3077

0 0 1

C M

6 5 3 8 0

P

D006
D008
D010

b.

c.

d.

J. Additional Descriptions for Materials Listed Above

GM97-0401 (Grassy Mountain Acceptance No.)
Furnace Brick and Debris
Emergency Response Chemtrec (800)424-9300
Certificate of Disposal Required

K. Handling Codes for Wastes Listed Above

15. Special Handling Instructions and Additional Information

Railcar No. UP32397

16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations.

If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimized the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name

Signature

Month Day Year

Jon C. Nickel

10 9 1 7 19 8

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name

Signature

Month Day Year

MIKE PACCINELLI

10 9 1 7 19 8

18. Transporter 2 Acknowledgement of Receipt of Materials

Printed/Typed Name

Signature

Month Day Year

19. Discrepancy Indication Space

20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.

Printed/Typed Name

Signature

Month Day Year

Becky Fields

Becky Fields

11 0 2 8 19 8

ORIGINAL — RETURN TO GENERATOR